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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,739

04/09/2004

Gabor Tigyi

RxB-001

2451

41546

7590

12/04/2008

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EXAMINER

OLSON, ERIC

ART UNIT

PAPER NUMBER

1623

NOTIFICATION DATE

DELIVERY MODE

12/04/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

drpatent@comcast.net  
dj\_russell@comcast.net

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,739	<b>Applicant(s)</b> TIGYI ET AL.	
	<b>Examiner</b> Eric S. Olson	<b>Art Unit</b> 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3,4,12,13,20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Detailed Action**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 21, 2008 has been entered.

This office action is a response to applicant's communication submitted September 21, 2008 wherein claims 20 and 23 are amended and claims 19, 21, 22, and 24 are cancelled. This application claims benefit of provisional application 60/462274, filed April 11, 2003.

Claims 3, 4, 12, 13, 20 and 23 are pending in this application. Claims 3, 4, 12, and 13 are withdrawn from consideration for being drawn to a non-elected invention.

Claims 20 and 23 as amended are examined on the merits herein.

Applicant's amendment, submitted September 21, 2008, with respect to the rejection of instant claims 19, 21, 22, and 24 under 35 USC 112, first paragraph, has been fully considered and found to be persuasive to remove the rejection as the rejected claims have been cancelled.

The following new grounds of rejection are introduced:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 20 is rejected under 35 U.S.C. 102(e) as being anticipated by Szarek. (US patent 6562836, cited in PTO-892)

Szarek discloses a method comprising administering to a subject a compound which inhibits amyloid deposits. (column 1 lines 55-65) Preferred compounds include O-phosphoryl-serine, Or serine phosphoric acid. (column 2 lines 28-35) Administering this compound will inherently have the effect described in claim 20 (inhibiting neointima formation) as it comprises administering the same compound to the same subject population as the claim, and will therefore anticipate the claimed invention.

Claims 20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Scolnick. (PCT publication WO99/66929, of reference included with PTO-892)

Scolnick discloses a method for lowering elevated blood cholesterol by administering a combination of a HMG-CoA reductase inhibitor and a geranylgeraniol compound. (p. 4 lines 12-22) The geranylgeraniol compound is selected from a group of

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structures including geranylgeraniol phosphate as a preferred embodiment. (p. 12 lines 9-28) Geranylgeraniol phosphate is a fatty alcohol phosphate, and therefore included within the listing of compounds of the claimed invention. An effect of lowering cholesterol will thereby inhibit atherosclerotic neointima formation because high cholesterol is a risk factor for the formation of atherosclerotic lesions and the associated neointima. Therefore Scolnick anticipates the claimed invention.

### **Conclusion**

No claims are allowed in this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. Olson whose telephone number is 571-272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric S Olson/  
Examiner, Art Unit 1623  
11/24/2008

/Shaojia Anna Jiang/  
Supervisory Patent Examiner, Art Unit 1623